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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,965	11/18/2003	James D. Ralph	F-294	5392

51640 7590 12/07/2007

SPINE MP
LERNER, DAVID, et al.
600 SOUTH AVENUE WEST
WESTFIELD, NJ 07090

EXAMINER	
PHILOGENE, PEDRO	
ART UNIT	PAPER NUMBER
3733	
MAIL DATE	DELIVERY MODE
12/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/715,965	RALPH ET AL.	
	Examiner	Art Unit	
	Pedro Philogene	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 October 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-10,23,26,29 and 30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4-10,23,26,29,30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 4-10, 20, 21, 23, 26, 29, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kohrs et al (6,855,166) in view of Kuras (6,607,558).

With respect to claims 1, 4-10, 20, 21, 23, 26, 29, 30, Kohrs discloses an intervertebral spacer device (100) comprising a spacer body dimensioned to fit between two vertebrae, the spacer body having a plurality of outer surfaces, a leading end and a trailing end, as best seen in FIG.6, the plurality of outer surfaces including a first outer surface or convexly curved upper surface (106) extending between the leading end and the trailing end of the spacer (100) and a second outer surface or a convexly curved lower surface (108) extending between the leading end and the trailing end of the spacer body (100), the upper and lower surfaces or the first and second outer surfaces facing away from one another, as best seen in FIG.6, the spacer body having a plurality of linear grooves (101, 102, 103, 104, 109, 110, 111, 120, 121, 122, 123) engageable by an intervertebral spacer insertion tool (500) having a plurality of linearly extending grooves engagement members, the plurality of linear grooves including a first linear groove formed in the first outer surface and a second linear groove formed in the second outer surface, the first and second linear grooves being parallel to one another (the grooves a the end (109) are parallel to grooves at the end (111); as best seen in

FIG.6. Each of the first and second outer surfaces is convex; as best seen in FIG.6. The first outer surface is an upper surface of the spacer body and the second outer surface is a lower surface of the spacer body; as best seen in FIG.6. The plurality of linear grooves comprises a first set of linear grooves formed in the first outer surface and a second set of linear grooves formed in the second outer surface, the first set of linear grooves being parallel to the second set of linear grooves; as best seen in FIG.6, each linear groove in the first set of linear grooves is directly opposite a respective one of the linear grooves in the second set of linear grooves; as best seen in FIG.6; the grooves are the parallel channels in the upper and lower convex surfaces in between (101, 103 and 102,104). The spacer body comprises a porous material, selected from porous metal, as set forth in column 3, lines 49-56, each of the first and second linear grooves has a smooth surface; as best seen in FIG.6, one of the first and second outer surfaces is rough, as best seen in the figures.

With respect to claims 4, it is noted that Kohrs did not teach of a pillow shape having rounded cornesr and rounded edges; as claimed by applicant. However, this particular configuration is nothing more than one of numerous configurations one of ordinary skill in the art would find obvious for the purpose of providing mating surfaces in the spacer of Kohrs. See in re Dailey 149 USPQ 47 (CCPA 1976).

It is noted that Kohrs did not teach of upper and lower surfaces being convexly curved along a plane extending between the leading and trailing ends and along a plane extending between the first and second sides; as claimed by applicant. However, in a similar art, Kuras evidences the use of an implant having upper and lower surfaces

being curved along a plane extending between the leading and trailing ends and along a plane extending between the first and second sides to resist relative movement between the convex surface and the vertebra and to provide a relatively long fatigue life for the disc.

Therefore, given the teaching of Kuras, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Kohrs et al; as taught by Kuras, to resist relative movement between the convex surface and the vertebra and to provide a relatively long fatigue life for the disc.

Response to Amendment

Applicant's arguments, see Remarks, filed 10/1/07, with respect to the rejection(s) of claim(s) 1,2,4-10,20-32 under 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Kuras. Kuras discloses an implant having upper and lower surfaces being convexly curved along a plane extending between the leading and trailing ends and along a plane extending between the first and second sides.

Conclusion

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-

4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene
December 3, 2007